

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

MARY NELL GILLESPIE,	}	
	}	
Plaintiff,	}	
	}	
vs.	}	CASE NO. CV 05-B-1770-NE
	}	
INTERNATIONAL PAPER CO.,	}	
	}	
Defendant.	}	

MEMORANDUM OPINION

Currently before the court is plaintiff Mary Nell Gillespie's and defendant International Paper Company's Joint Motion to Remand Case to the Plan Administrator and to Stay Proceedings in this Court. (Doc. 9.) The court will treat the parties' Motion to Remand as a Motion to Dismiss. Upon consideration of the record, the submission of the parties, and the relevant law, the court is of the opinion that the parties' Motion is due to be granted and plaintiff's claims are due to be dismissed.


Plaintiff filed this action stating claims against her former employer, International Paper, for violations of her rights under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, *et seq.* In their Joint Motion, the parties state that plaintiff's claim was not considered at the final administrative appeal level because the plan administrator found that her appeal was untimely. (Motion to Remand, at 2.) However, in an effort to resolve plaintiff's claim without the need for litigation, International Paper has agreed to waive the timeliness of plaintiff's final administrative appeal. (*Id.*) The parties state that the plan administrator will provide plaintiff with an independent medical examination and consider her

claim at the final administrative appeal level. (*Id.*) Because plaintiff's administrative remedies have not been exhausted pursuant to 29 U.S.C. § 1001, *et seq.*, she cannot maintain an action under ERISA. Therefore, this matter is due to be dismissed without prejudice.

CONCLUSION

Based on the above, this court is of the opinion that the parties' Motion is due to be granted. An Order dismissing this case will be entered contemporaneously with this Opinion.

DONE this the 30th day of December, 2005.



SHARON LOVELACE BLACKBURN
UNITED STATES DISTRICT JUDGE